

MEMORANDUM OF LAW

DATE: August 7, 1991

TO: Lawrence Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: San Diego Municipal Code Section 24.1120 - Industrial Disability-Safety Member

In a memorandum dated June 19, 1991, you requested a written legal opinion of San Diego Municipal Code ("SDMC") section 24.1120 in relation to eligibility for disability retirement, including a definition of "pre-existing condition" as used in this section. My analysis follows:

BACKGROUND

SDMC section 24.1120 was added to Division 11 (Pension Act of 1981) on September 30, 1985, by 0-16510 N.S. It became effective on October 11, 1985. Entitled "Industrial Disability-Safety Member," this section set forth the requirements for industrial disability retirements for safety members who were members of the 1981 Pension Plan. At the time of its adoption, SDMC section 24.1120 read as follows:

(a) Any safety member permanently incapacitated from the performance of duty as the result of physical injury or disease arising out of or in the course of his or her employment; and

(1) not arising from a preexisting medical condition, or

(2) not arising from a nervous or mental disorder, irrespective of claimed causative factors, shall be retired for disability with retirement allowance, regardless of age or amount of service.

(Emphasis added.)

Prior to the adoption of this section, disability retirements of any kind were not available for safety or general members of the 1981 Pension Plan. Pursuant to the adoption of this section, industrial disability retirements became available, when all other requirements were met, for safety members only.

SDMC section 24.1102, entitled "Membership," further expanded disability retirement benefits available to safety members who were members of the 1981 Pension Plan. Effective January 1, 1988, all safety

members who were members of the 1981 Pension Plan became entitled to all the rights and benefits of the City Employees' Retirement System ("CERS") Plan. The provisions of SDMC section 24.1120 were specifically incorporated into this section for all safety members who were members of the 1981 Pension Plan as of December 31, 1987, and for all safety members employed thereafter. Thus, effective January 1, 1988, safety members in the 1981 Pension Plan were given the opportunity to apply for nonindustrial disability retirements as well, assuming all other requirements were met.

The award of nonindustrial disability retirement benefits for safety members realized on January 1, 1988, was the result of a series of retirement benefit changes resulting from the 1987 meet and confer process. This change was negotiated and agreed to by the Management Team authorized by the City Council, the San Diego Police Officers' Association ("POA") and Local 145. This benefit change was also voted upon and approved by the safety members of the retirement system. It was subsequently approved by the Retirement Board on February 27, 1987. As a result, 0-16992 was adopted on December 7, 1987. SDMC section 24.1102(d) was added to reflect the safety member benefit changes described in that ordinance and in this memorandum.

SDMC section 24.1120 was subsequently amended on May 15, 1989, by 0-17295 N.S. This amendment redefined the term "member" for purposes of this section. The term was enlarged to encompass any member, as defined in SDMC section 24.0103(e). SDMC section 24.0103(e) provides in pertinent part: "'Member' means any person who actively participates in and contributes to the Retirement System, and who is thereafter entitled, when eligible, to receive benefits therefrom. There are three classes of members: General, Safety and Legislative."

As a result of this amendment, industrial disability retirements became available, when all other requirements were met, for general members. General members of the 1981 Pension Plan, however, are also subject to different eligibility dates for disability retirements. From September 3, 1982, (the effective date of the 1981 Pension Plan) until June 15, 1989, (the effective date of 0-17295 N.S. which expanded the definition of "member" in SDMC section 24.1120 to include general members) general members of the 1981 Pension Plan were not eligible for disability retirements of any kind. The benefit did not exist. Although SDMC section 24.1120 was adopted on September 30, 1985, with an effective date of October 11, 1985, this section, as discussed earlier, addressed industrial disability retirements for safety members only.

On June 15, 1989, general members who were members of the 1981 Pension Plan became entitled to apply for industrial disability retirements, when eligible, because the term "member" in SDMC section 24.1120 was amended to include general members. Effective July 1, 1989, general members of the 1981 Pension Plan became entitled to all the rights and benefits of

the CERS Plan, including nonindustrial disability retirement benefits. The award of disability retirement benefits for general members realized on June 15, 1989 and July 1, 1989, was the result of a package of retirement benefit changes resulting from the 1988 meet and confer process. This change was negotiated and agreed to by the Management Team authorized by the City Council, the Municipal Employees Association ("MEA") and Local 127 AFSCME, AFL-CIO. This benefit change was also voted upon and approved by the general members of the retirement system. It was subsequently approved unanimously by the Retirement Board at its special meeting of January 13, 1989. As a result, 0-17295 was adopted on May 15, 1989. It became effective thirty days later on June 15, 1989. SDMC section 24.1102(e) was added and SDMC section 24.1120 was amended to reflect the general member benefit changes described in that ordinance and in this memorandum.

ANALYSIS

SDMC section 24.1120 now provides in pertinent part:

- (a) Any Member, as defined in section 24.0103(e), permanently incapacitated from the performance of duty as the result of physical injury or disease arising out of or in the course of his or her employment; and
 - (1) not arising from a preexisting medical condition, or
 - (2) not arising from a nervous or mental disorder, irrespective of the claimed causative factors, shall be retired for disability with retirement allowance, regardless of age or amount of service.

As noted above, the term "member" for purposes of SDMC section 24.1120, is no longer restricted to safety members. It is now defined in SDMC section 24.0103(e) which includes General, Safety and Legislative members. The definition of "pre-existing medical condition" as used by SDMC section 24.1120 requires the identification of the member's classification in the retirement system, the date of the alleged disabling injury and the type of disability retirement sought. Different dates are used to establish eligibility for disability retirements for safety members and general members. In addition, the dates of eligibility for general and safety members will change depending on the type of disability retirement sought.

A medical condition not arising from a nervous or mental disorder occurring before October 11, 1985, will be considered a pre-existing condition if a safety member is seeking an industrial disability retirement. If that safety member, however, is seeking a nonindustrial disability retirement, the critical date is January 1, 1988. Any medical condition not arising from a nervous or mental disorder occurring before

this date will be deemed a pre-existing condition under SDMC section 24.1120.

With respect to general members, any medical condition not arising from a nervous or mental disorder occurring before June 15, 1989, will be deemed a pre-existing condition under SDMC section 24.1120. If that general member, however, is seeking a nonindustrial disability retirement, the critical date is July 1, 1989. For the convenience of Retirement staff, a history of the pertinent changes in the SDMC affecting SDMC section 24.1120 has been attached as Attachment "A."

CONCLUSION

Any determination of a pre-existing condition under SDMC section 24.1120 involves the identification of the member's classification in the Retirement System, the date of the alleged disabling injury at issue and the type of disability retirement sought. With respect to general members, the operative dates are June 15, 1989, for industrial disability applications and July 1, 1989, for nonindustrial disability applications. With respect to safety members, the operative dates are October 11, 1985, for industrial disability applications and January 1, 1988, for nonindustrial disability applications. Please let me know if I can be of any further assistance.

JOHN W. WITT, City Attorney

By

Loraine L. Etherington

Deputy City Attorney

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Attachment

ML-91-58